

# Keeping Judicial Elections Respectable

By Chief Justice Joseph E. Lambert

At the beginning of the year, the outlook was ominous for Kentucky judicial elections. By virtue of one-time changes in the length of judicial terms and early retirement, every Kentucky judgeship, except two on the Supreme Court, was scheduled to be on the 2006 election ballot. Moreover, the judicial elections of 2006 were to be our first of a large scale since Republican Party of Minnesota v. White, where the Supreme Court of the United States invalidated many former restrictions on judicial campaign conduct. For these reasons, there was widespread concern among Kentucky lawyers and judges that our judicial elections would become name-calling, mudslinging events that would seriously harm public trust and confidence in the judiciary. However, with two months remaining before the General Election, and with far fewer contested elections than was anticipated, I am happy to say that very few unsavory incidents have occurred. On the other hand, the most dangerous period is directly ahead. In the coming weeks, some judicial candidates will be told by their consultants that they are behind in the polls and must “go negative” to win.

Despite the hopeful signs and generally good behavior by candidates, political partisans, special interest groups, and a few extremists are clearly trying to politicize judicial elections for their parochial interests. Some are demanding specific answers from candidates on questionnaires and attempting to draw candidates into the partisan fray. Some have made broadside attacks on judges and judicial candidates for no reason other than political or personal animus. Some unapologetically want to transform the judiciary into a political institution. They ignore the right of every citizen to a judiciary free of

interest, bias, or prejudice.

Kentucky has a thirty-year tradition of non-partisan judicial elections, but more and more the party affiliation of judges and judicial candidates is being discussed in the news media with the clear implication that it influences official action. Political party partisans are letting their



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faithful know who their candidates are and who they are not. They behave as if the law is irrelevant.

Narrow or single issue special interest groups have also begun to insert themselves into the judicial selection process. Where judges are elected, and eighty-two percent of all state court judges are elected, some such groups show little interest in overall ability, biography, or performance in office. What they care

about is whether a judge is willing to commit himself or herself to a particular course of action on their issues of interest. The irony is that most judges never encounter a case involving a “hot-button” social issue. Their participation would be far more useful if the qualifications of judicial candidates were more broadly analyzed.

The fairness and impartiality of our courts is vital to every Kentuckian. With ninety-six percent of all litigation in America in state courts, most citizens seek their justice in state courts. The right of citizens to a judicial decision-maker who is independent of improper influence is of fundamental importance. Recently, retired Supreme Court Justice Sandra Day O'Connor spoke passionately about attacks on judges and attempts to politicize courts. She stated that such efforts “pose a direct threat to our constitutional freedom” and encouraged those to whom she spoke as follows: “I want you to tune your ears to these attacks. . . . You have an obligation to speak out.” Reiterating her respect for the right of people to rail against judicial decisions they do not like, Justice O'Connor said that citizens have no right to demand that judges rule according to their “nakedly partisan result-oriented reasoning.”

Nowadays, those who attempt to improperly influence the judiciary are everywhere. Talk radio hosts, internet bloggers, and cable news producers provide a forum for the dissemination of uninformed and cynical opinion. Extreme views presented in virulent language dominate. Of course, this validates losing litigants who blame judges rather than the weakness of their cases and otherwise contributes to distrust and misunderstanding of courts.

Despite this climate, most Americans

still believe that courts are fair and impartial. Most Americans also believe that courts should be protected from political pressure. Courts have been a vital part of our government for more than two hundred years and they must not be weakened. Our late Chief Justice William Rehnquist called the American judiciary one of the “crown jewels” of our democracy.

Those who claim courts are not accountable are wrong. Courts are accountable to the Constitution and laws of the United States and to the Constitution and laws of their states. But they are not accountable to political parties, elected officials, special interest groups, and the profoundly uninformed in pursuit of their “nakedly partisan” interests.

I repeat the words of Justice O'Connor in which she asked lawyers to “tune your ears to these attacks. . . . You have an obligation to speak out.” In this judicial election season, lawyers should accept their responsibility to act for the protection of the judiciary and speak out against abuses.

Those who seek to distort judicial elections and improperly influence the judiciary have first amendment rights, but others have rights, too. Private groups have been formed to encourage appropriate behavior by judicial candidates and to denounce candidates or others who seek to corrupt judicial campaigns. But we must not depend on others to do our work. Lawyers are the true guardians of our judicial system.

All judges were lawyers first, and we come and go from the judiciary with regularity. While we welcome help from citizen groups and lay opinion-makers, we must not depend on them to preserve our judicial system and its centerpiece, judicial independence. Lawyers, individually and collectively, can do more than any group to demand of those seeking judicial office, and of those who seek to influence judicial selection, a high level of conduct. It is imperative for lawyers to solemnly accept their responsibility. Lawyers must speak out to ensure that judicial elections remain a respectable method of judicial selection. ■